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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Beetham et al.

Application No.: 09/685,403

Group Art Unit: 1638

Filed: October 10, 2000

Examiner: D. Kruse

For: NON-TRANSGENIC HERBICIDE  
RESISTANT PLANTS

Attorney Docket No.: 7991-086

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**PROVISIONAL ELECTION UNDER 37 C.F.R. § 1.143 WITH TRAVERSE**

Assistant Commissioner for Patents  
U.S. Patent and Trademark Office  
P.O. Box 2327  
Arlington, VA 22202

Sir:

In response to the outstanding Office Action dated July 19, 2001, in which the Examiner imposed a restriction requirement, please enter and consider the remarks below. Applicants submit herewith a Petition for an Extension of Time for four months from August 19, 2001 to an including December 19, 2001, accompanied by the appropriate fee.

**REMARKS**

The Examiner has required an election under 35 U.S.C. § 121 of one of the following inventions:

- Group I: Claims 1-23, drawn to a non-transgenic herbicide resistant plant expressing a mutant EPSPS gene and a method of making the same, classified in class 800, subclass 300, for example.
- Group II: Claim 24, drawn to an isolated mutant EPSPS protein, classified in class 435, subclass 183, for example.

The Examiner contends that the inventions of the above Groups are distinct, each from the other.

Group I: Claims 1-23, drawn to a non-transgenic herbicide resistant plant expressing a mutant EPSPS gene and a method of making the same, classified in class 800, subclass 300, for example.

With respect to division of the invention into two groups and the reasons stated therefor, Applicants respectfully traverse and submit that to search and examine the claims of all the Groups together would not be a serious burden.

The M.P.E.P. § 803 (Seventh Edition, Rev. 1, July 2000) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Thus, in view of M.P.E.P. § 803, claims 1-24 should be searched and examined in the subject application.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicants respectfully request that the above-made remarks be made of record in the file history of the present application.

Respectfully submitted,

Date December 4, 2001

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Enclosure